

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

EXPLORICA, INC.

Plaintiffs,

v.

ELDERHOSTEL, INC.  
d/b/a EXPLORITAS,

Defendants.

Civil Action No. 09-11719-RGS

**ELDERHOSTEL'S PROPOSED VERDICT FORM**

Pursuant to the Court's Order dated January 26, 2010, Elderhostel proposes the following verdict form.

**JURY VERDICT**

**Question 1:**

**Has plaintiff Explorica proven by a preponderance of the evidence that Explorica's use of its mark shown below,**



**and Elderhostel's use of its mark shown below,**



**are substantially similar?**

Answer 1.      YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question 1 was "No" please stop and return your verdict form to the Court officer – you have reached a verdict.

If your answer was "Yes" please continue on to Question 2.

**Question 2:**

**Has plaintiff Explorica established by a preponderance of the evidence that a substantial number of reasonably prudent customers are likely to be confused by the similarity between the trademarks shown above into mistakenly believing that Elderhostel is the source or sponsor of Explorica's services?**

Answer 2.      YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question 2 was “No” please stop and return your verdict form to the Court officer – you have reached a verdict.

If your answer was “Yes” please continue on to Question 3.

**Question 3:**

**Has Explorica established that Elderhostel, in adopting the EXPLORITAS mark, willfully intended to deceive potential customers or to improperly benefit from Explorica’s reputation?**

Answer 3.      YES \_\_\_\_\_ NO \_\_\_\_\_

I certify that the above answer(s) represent the unanimous verdict of the jury.

Date: \_\_\_\_\_

Foreperson

Respectfully submitted,

ELDERHOSTEL, INC.

By its attorneys,

Dated: February 11, 2010

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**CERTIFICATE OF SERVICE**

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

/s/ Michael A. Albert